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NO. 80-1511

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

MARY CATHERINE HALVORSEN,
Petitioner,

v.

ALBERT (BOYER) HALVORSEN,
Respondent.

ON PETITION FOR A WRIT OF MANDAMUS OR IN THE ALTERNATIVE, A WRIT OF CERTIORARI TO THE COURT OF APPEALS, DIVISION I, STATE OF WASHINGTON, JUDGES JAMES, DURHAM AND RINGOLD

REBUTTAL BRIEF OF PETITIONER

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REBUTTAL BRIEF OF PETITIONER

REBUTTAL TO STATEMENT OF THE CASE

Respondent's brief states "This is a divorce case". It sounds as if he is saying divorce cases have no constitutional rights; that the United States Constitution is in suspension whan a divorce case is decided; and that divorce cases, irregardless of flagrant violation of the law, are untouchable. This simply confirms that

there is no protection under the "No-Fault" divorce laws of the State of Washington.

The Constitution of the United States is in effect at all times. The due process clause and the equal protection clause of the Fourteenth Amendment do not contain any exceptions; divorce actions are not exempt. It is the "No-Fault" divorce laws that deny the rights of the Fourteenth Amendment to the United States Constitution to the residents of the State of Washington.

Federal questions were raised at the appellate level in accordance with Washington State Rules of Appellate Procedure, RAP 2.5 which allows the raising of a federal question for the first time at the appellate level. Petitioner's BRIEF on appeal before Division I, Court of Appeals, State of Washington on pp. 8, 9, and 10 arguing about the Alaska property states:

> instead without jurisdiction and in violation of the Constitution

> of the State of Washington (Amendment 9, Art. I, Sec. 16, and Art. I. Sec. 3) and of the 14th Amendment of the United States Constitution partitioned that land in a marriage dissolution . . . thereby taking private property from the Appellant . . . in violation of due process of law.
>
> The court was in error when without jurisdiction it prohibited the Appellant from asserting her right to collect such increase for rental adjustment and awarding them to Boyer Towing, Inc. or the Respondent together with the option . . . contrary to due process of the 14th Amendment of the United States Constitution.

(Emphasis added.) The equal protection issue was raised on p. 10 of appellant's brief through the fair, just and equitable question:

> each was entitled to make a fair, just and equitable distribution of all the community and separate property.

Petitioner's PETITION FOR DISCRETIONARY REVIEW to the Washington State Supreme Court, brought to the attention of that Court that the Court of Appeals did not

address the issues of fact and issues of law. The Petition on pp. 16, 17, and 18 further states:

> The Court of Appeals . . . failed to rule on the voidness of the trial jurisdiction as being a violation of the rights or property of that real property . . . established and subject to the jurisdiction of Alaska law as guaranteed by the Fourteenth Amendment and prohibited from changing those rights. . . . Such issue of law was presented to the Court of Appeals to review in the appeal.
>
> A substantial question of importance for the Court to decide is . . . a fair, just and equitable distribution of those assets acquired during marriage between the parties on dissolution of that marriage.

Thus the federal questions were raised at the appellate level which is allowable under Washington Appellate Rules. The failure of the Court of Appeals to address the issues of fact and issues of law was raised to the Washington Supreme Court, which court declined to act.

REBUTTAL ARGUMENT

In respondent's brief, Honeyman v. Hanan, 300 U.S. 14 (1937) is cited as saying that the record must show that a federal question was presented. Honeyman further states: "Whether these requirements have been met is itself a federal question".

> In deciding whether it has jurisdiction this Court must determine whether a federal question was necessarily decided by the state court; the determination must rest upon an examination of the record; and while a certificate or statement by the state court that a federal question has been presented to it and necessarily passed upon may aid this Court in such examination of the record, it cannot avail to foreclose the inquiry or to import a federal question into the record.

The next case cited, Lynch v. New York, 293 U.S. 52 (1934), is a case where other remedies were available under local law of the State of New York. These remedies are not available in the State of Washington, thus rendering this case, and

the two following cases cited in respondent's brief, inapplicable to my case.

Respondent's brief next cites Will, U.S. District Judge v. United States, 389 U.S. 90 (1967). It is a criminal case involving the issuance of a Writ of Mandamus before the trial court had rendered its decision. This is not the case here. Here the trial court has rendered its decision; the court of appeals did not comply with State law and answer the issues of law and fact raised on appeal including federal rights of due process and equal protection. The State Supreme Court declined any further action. No further State remedy is available. In the Will case the trial court had not rendered an opinion, thus causing the court of appeals to act prematurely.

Kerr v. United States, 426 U.S. 394 (1975), another criminal case, is

similar to the Lynch case in that there were other adequate alternatives. My case does not have any such alternatives; no further relief is available; therefore, my case is properly before the Court's jurisdiction.

REBUTTAL CONCLUSION

The Petition should be granted.

Respectfully submitted,

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Mary Catherine Halvorsen